

REMARKS

Claims 1, 4-12, 14, and 18-25 are canceled without prejudice to their continued prosecution in a continuation and/or divisional application.

New claims 33-41 are fully supported by the canceled claims and by the description in the specification (e.g., page 12, line 19 to page 16, line 18; page 21, lines 1 to 17; page 24, line 19 to page 25, line 16; page 34, line 6 to page 36, line 8; etc.).

No new matter has been added. Upon entry of this Response, claims 33-41 are present and active in the application.

Claim Rejections – 35 U.S.C. § 112

The rejection of claims 1, 4, 7, 9-12, 20, and 22-25 under 35 U.S.C. § 112, second paragraph, as being indefinite has been rendered moot by the cancellation without prejudice of these claims. Accordingly, withdrawal of this ground of rejection is respectfully requested.

Claim Rejections – 35 U.S.C. § 102

The rejection of claims 1, 4, 7, 9-12, 14, 20, and 22-25 under 35 U.S.C. § 102(b) as being anticipated by *Rodriguez et al.* (U.S. Patent No. 6,228,652 B1) and the rejection of claims 1, 8, 11, 14, 21, and 24 under 35 U.S.C. § 102(b) as being anticipated by the English abstract of *Shingo* (JP B6-19349) have been rendered moot by the cancellation without prejudice of these claims. Accordingly, withdrawal of these grounds of rejection is respectfully requested.

Claim Rejections – 35 U.S.C. § 103

The rejection of claims 1, 4-12, 14, and 18-25 under 35 U.S.C. § 103(a) as being unpatentable over *Oku et al.* (U.S. Patent No. 6,106,778) in view of *Rodriguez et al.* has been rendered moot by the cancellation without prejudice of these claims. Accordingly, withdrawal of this ground of rejection is respectfully requested.

New Claims

The manner of claiming used in canceled claims 1, 4, 7, 9-12, 20, and 22-25 identified in the Office Action (pages 7-10) as being indefinite under 35 U.S.C. § 112, second paragraph has been avoided in new claims 33-41. Applicants respectfully submit that new claims 33-41 particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In addition, new independent claims 33 and 38 recite elements that are neither taught nor suggested by *Rodriguez et al.*, the English abstract of *Shingo* or *Oku et al.*

By way of example, new independent claim 33 recites "an analyzing portion configured for performing operations comprising: differentiating the blood cells and the fluorescent carrier particles based on the detected fluorescence intensities by the first detector; counting the differentiated blood cells; and detecting agglutination degree of the fluorescent carrier particles based on the detected scattered light intensities by the second detector," which is neither taught nor suggested by *Rodriguez et al.*, the English abstract of *Shingo* or *Oku et al.*, individually or in combination.

Similarly, new independent claim 38 recites "an analyzing portion configured for performing operations comprising: differentiating the fluorescent carrier particles from the blood cells based on the detected fluorescence intensities of the immunoassay sample by the first detector; detecting agglutination degree of the fluorescent carrier particles based on the detected scattered light intensities of the immunoassay sample by the second detector; differentiating the blood cells based on the detected fluorescence intensities of the counting sample by the first detector and the detected scattered light intensities of the counting sample by the second detector; and counting the differentiated blood cells," which is likewise neither taught nor suggested by *Rodriguez et al.*, the English abstract of *Shingo* or *Oku et al.*, individually or in combination.

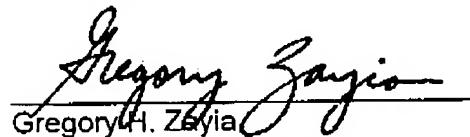
Inasmuch as *Rodriguez et al.*, the English abstract of *Shingo*, and *Oku et al.* fail to teach or suggest each and every element of independent claims 33 and 38, Applicant respectfully submits that new claims 33-41 are in condition for allowance as presently written. Favorable consideration of these claims is respectfully requested.

Conclusion

In view of the Amendment and Remarks set forth above, Applicant respectfully submits that the claimed invention is in condition for allowance. Early notification to such effect is earnestly solicited.

If for any reason the Examiner feels that the above Amendment and Remarks do not put the claims in condition to be allowed, and that a discussion would be helpful to advance prosecution, it is respectfully requested that the Examiner contact the undersigned agent directly at (312)-321-4257.

Respectfully submitted,



Gregory H. Zayia
Registration No. 48,059
Agent for Applicant

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200